

On August 5, 2004, Magistrate Judge Hogan issued an Order in which he granted Plaintiffs an additional two hours (on top of the additional one hour previously granted) to depose Christopher Carey, Provident's former Executive Vice President and Chief Financial Officer. (Doc. 363 at 1) Magistrate Judge Hogan, however, denied Plaintiffs' request as to the Provident Director Defendants, reasoning that those witnesses "could not have the depth of knowledge [about the PWC Report] possessed by Mr. Carey, the C.F.O." (*Id.*) On August 12, 2004, Plaintiffs filed objections to Magistrate Judge Hogan's refusal to grant more than an additional two hours for the Carey deposition and refusal to grant any additional time (on top of the one hour previously granted) for the Provident Director Defendants. (Doc. 368)

This Court should only overturn Magistrate Judge Hogan's discovery order if it is "clearly erroneous or contrary to law." Fed.R.Civ.P. 72(a). As even Plaintiffs concede in their objections, this is a "heavy burden" because "magistrates are afforded broad discretion in resolving discovery disputes." (Doc. 368 at 5, quoting *Universal Acupuncture Pain Serv., P.C. v. State Farm Mutual Auto Ins. Co.*, 2002 U.S. Dist. LEXIS 19555 at 2)

Magistrate Judge Hogan did not abuse his discretion in refusing to grant Plaintiffs more than two additional hours to depose Mr. Carey and any more additional time to depose the Provident Directors. The PWC Report was an investigative report into the Restatements prepared by a third party (Pricewaterhouse Coopers), not by any of the Provident Directors. The conclusions in the PWC Report were made by Pricewaterhouse Coopers, not the Directors. The Directors have already been deposed about their knowledge of the facts behind the Restatements. Deposing the Directors about someone else's conclusions about the Restatements would be irrelevant and a waste of time. That is especially true given that Magistrate Judge Hogan generously granted Plaintiffs two additional hours (on top of the one hour previously granted) to

depose Mr. Carey, Provident's former CFO and the person most knowledgeable about the facts behind the Restatements.

If Magistrate Judge Hogan had refused to grant Plaintiffs *any* additional time, such a decision would not have been clearly erroneous or contrary to law because the "law" expressly states that "a deposition is limited to one day of seven hours." Fed.R.Civ.P. 30(d)(2). Magistrate Judge Hogan, however, did not limit Plaintiffs to the deadline, but instead granted them additional time. Magistrate Judge Hogan has lived with this case for years, now, and has an intricate knowledge of how discovery has progressed. His decision to grant Plaintiffs three additional hours to depose Mr. Carey and one additional hour to depose the Provident Directors was well within his discretion and, therefore, is not clearly erroneous or contrary to law.

For these reasons, Defendants respectfully request that Plaintiffs' objections be overruled.

Respectfully submitted,

/s/ James H. Greer

David C. Greer
James H. Greer
BEISER, GREER AND LANDIS, LLP
400 National City Center
6 North Main Street
Dayton, Ohio 45402
Tel: (937) 223-3277
Fax: (937) 223-6333
Email: dcg@bgllaw.com; jhg@bgllaw.com
Attorneys for OHSL and Provident
Defendants

OF COUNSEL:

James E. Burke
Rachael A. Rowe
KEATING, MUETHING & KLEKAMP PLL
1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FOREGOING THE PROVIDENT AND OHSL DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTION TO MAGISTRATE JUDGE HOGAN'S AUGUST 5, 2004 ORDER was served upon the following, by ordinary U.S. mail, this 20th day of August, 2004.

Michael G. Brautigam
Gene I. Mesh
Gene Mesh & Associates
2605 Burnet Avenue
Cincinnati, Ohio 45219-2502

Attorneys for Plaintiffs

John W. Hust
Michael E. Maundrell
Schroeder, Maundrell, Barbieri & Powers
11935 Mason Road, Suite 110
Cincinnati, Ohio 45249

Attorneys for Dinsmore Defendants

James E. Gauch
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113

Attorney for Defendant Ernst & Young

Michael R. Barrett
Thomas W. Breidenstein
Barrett & Weber
500 Fourth & Walnut Centre
105 East Fourth Street
Cincinnati, Ohio 45202-4015

Attorneys for KMK Defendants

/s/ James H. Greer

James H. Greer

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